

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SPERO HARITATOS,

Plaintiff,

-vs-

Civil Action No.
6:05-cv-930 (DNH/GJB)

HASBRO, INC. and TOYS "R" US-NY LLC,

Defendants.

**ROBERT E. PURCELL'S DESIGNATION OF THE CONTENTS OF
THE RECORD ON APPEAL PURSUANT TO LOCAL RULE 72.1(b)**

Robert E. Purcell hereby designates the contents of the Record on Appeal of the Memorandum Decision and Order of Magistrate Judge DiBianco dated March 28, 2008. This designation is being made in connection with his filing of Objections pursuant to Fed. R. Civ. P. 72. Although the Memorandum Decision and Order seems to affect only Plaintiff's counsel of record, Mr. Purcell, to the extent that the Memorandum Decision and Order is deemed to affect Plaintiff, he should also be deemed a party joining in Mr. Purcell's objections and this Designation.

Purcell designates the following contents of the Record on Appeal:

1. Docket Entry Nos. 18, 20, 27, 30, 35 – 43, (between 43 and 44), 45, (between 46 and 47), 47, (between 47 and 48), 51R, 52, 58 – 62, (between 62 and 63), 63, 64 – 68, 71, 77, 95, (between 95 and 96), (between 125 and 126), 130 – 133, 144, (between 158 and 159), (between 161 and 162), and 168 – 183 in the Court's record in the instant lawsuit.
2. Transcript of the hearing on March 4, 2008 conducted before Magistrate Judge DiBianco.
3. Exhibits 1 – 48 which are identified in Defendant Hasbro, Inc.'s exhibit list with respect to the March 4, 2008 hearing before Magistrate Judge DiBianco.

4. Plaintiff's Exhibit Nos. 1, and 13 – 34, set forth in Plaintiff's exhibit list in connection with the March 4, 2008 hearing before Magistrate Judge DiBianco.

5. Exhibit 35, comprising a copy of the TTAB protective order in the related trademark opposition proceedings dated, December 15, 2004, and submitted in the March 4, 2008 hearing before Magistrate Judge DiBianco.

6. Exhibit 36, comprising a letter-brief from Robert E. Purcell to Magistrate Judge DiBianco dated June 26, 2006 and identified as Exhibit 36 at the March 4, 2008 hearing before Magistrate Judge DiBianco.

7. Selected pages from The American Heritage Dictionary of the English Language circa 1969 containing page 1426 on which the definition of "vexatious" occurs. (attached hereto)

8. Copies of pages 38 – 41 and 124 – 125 of the transcript of the deposition of Sharon Haritatos taken May 18, 2006 (attached hereto)

9. Copies of pages 1 – 4, 89 – 92, and 305 – 308 of the transcript of the deposition of Spero Haritatos taken May 17, 2006, by Hasbro, Inc.'s attorney, Michael Sant'Ambrogio. (attached hereto)

DATED: April 10, 2008

HISCOCK & BARCLAY, LLP

By: 

Robert E. Purcell
Bar Roll No. 510595

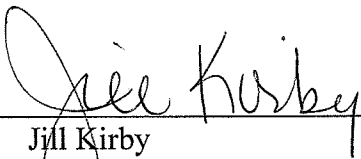
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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2008, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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Manufactured in the United States of America



vest-pocket

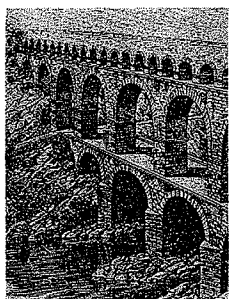
vibrato



Vesuvius
Seen from the
ruins of Pompeii



vetch
Vicia sativa



viaduct
The Pont du Gard,
near Nîmes, France,
a Roman aqueduct now
used as a viaduct

Old French, from Latin *vestimentum*, from *vestire*, to dress, from *vestis*, garment. See *vest*.] —*vest-ment'al* *adj.*

vest-pocket (vēst'pōk'it) *adj.* 1. Designed to fit into a vest pocket: a *vest-pocket* book. 2. Relatively small; diminutive.

ves-try (vēs'trē) *n., pl. -tries*. 1. A room in a church where the clergymen put on their vestments and where these robes and other sacred objects are stored; a sacristy. 2. A meeting room in a church. 3. In the Anglican and Episcopal churches, a committee of members of the parish or congregation that administers the affairs of the parish or congregation. 4. *Anglican Church*. A meeting of this group or of the entire congregation or the place in which the meeting is held. [Middle English *vestrie*, variant of *vestiarie*, *VESTIARY*.]

ves-try-man (vēs'trē-mən) *n., pl. -men* (-mīn). A member of a vestry.

ves-ture (vēs'chər) *n. Archaic*. 1. Clothing; apparel. 2. Anything that covers or cloaks: *hills in a vesture of mist*. —*tr.v.* *vestured, -turing, -tures*. To cover with vesture; clothe. [Middle English, clothes, from Old French, from Late Latin *vestitūra*, from Latin *vestire*, to clothe. See *vestment*.]

ve-su-vi-an (və-sōō'vē-ən) *n.* 1. A mineral, *idocrase* (see). 2. A match used for lighting cigars; a fusee. [From *VESUVIUS*.]

ve-su-vi-an-ite (və-sōō'vē-ə-nīt') *n.* A mineral, *idocrase* (see). [Vesuvian, of *VESUVIUS* (because first found in the lava of the volcano) + *-ite*.]

Ve-su-vi-um (və-sōō'vē-əs) *Italian Ve-su-vi-o* (və-zōō'vyō). An active volcano, 3,891 feet high, in western Italy near Naples.

vet (vēt) *n. Informal*. A veterinarian. —*v.* *vetted, vetting, vets. Informal*. —*tr.* 1. To practice veterinary medicine upon. 2. Chiefly *British*. To examine or appraise expertly: *vet a manuscript*. —*intr.* To be or become a veterinarian.

vet. 1. veterinarian. 2. veterinary; veterinary.

vetch (vēch) *n.* Any of various climbing or twining plants of the genus *Vicia*, having pinnate leaves and small, usually purplish flowers. [Middle English *fecche*, from Old North French *veche*, from Latin *vicia*. See *weik* in Appendix.*]

vetch-ling (vēch'ling) *n.* Any of several plants of the genus *Lathyrus*, having pinnate leaves, slender tendrils, and small, variously colored flowers. [VETCH + *-LING*.]

veter. veterinary.

vet-er-an (vēt'ər-ən, vēt'rən) *n. Abbr. vet.* 1. One who has a long record of service in a given activity or capacity. 2. One who has been a member of the armed forces. —*adj.* 1. Experienced because of long service: a *veteran politician*. 2. Pertaining to or suggestive of a veteran or veterans. [French *vétéran*, from Latin *veterānus*, from *vetus* (stem *vet-*), old. See *wet-* in Appendix.*]

Veterans' Administration. *Abbr. VA, V.A.* A Federal agency concerned with the welfare of veterans of the armed forces.

Veterans Day: November 11, observed as a national holiday in the United States, commemorating the armistice in World War I (1918). Formerly called "Armistice Day."

Veterans of Foreign Wars. *Abbr. VFW, V.F.W.* A society founded in 1899 composed of veterans of the United States Armed Forces who have fought in a foreign country.

vet-er-i-nar-i-an (vēt'ər-ə-nār'ē-ən, vēt'rə-) *n. Abbr. vet.* A person trained and authorized to treat animals medically.

vet-er-i-nar-y (vēt'ər-ə-nēr'ē, vēt'rə-) *adj. Abbr. vet., veter.* Of, pertaining to, or being the science of the diagnosis and treatment of diseases and injuries of animals, especially domestic animals. —*n., pl. veterinaries.* A veterinarian. [Latin *veterinarius*, from *veterinus*, of cattle. See *wet-* in Appendix.*]

veterinary medicine. The medical science of the diagnosis and treatment of animal diseases and injuries.

veterinary surgeon. *Abbr. V.S.* A veterinarian.

vet-iv-er (vēt'ə-vər) *n.* 1. A grass, *Vetiveria zizanioides*, of tropical Asia, cultivated for its aromatic roots that yield an oil used in perfumery. 2. The roots of this plant. [French *vetiver*, *vettyver*, from Tamil *vetivēru*: *vetti*, worthlessness + *vēru*, useless.]

Vet-lu-ga (vēt-lōō'gə). A river of the Soviet Union, rising in the northern Urals and flowing 500 miles north, west, and then south to the Volga.

ve-to (vē'tō) *n., pl. -toes*. 1. The vested power or constitutional right of one branch or department of government, especially the right of a chief executive, to reject a bill passed by a legislative body and thus prevent or delay its enactment into law. 2. The exercise of this right. 3. The official document communicating the rejection and the reasons for it. Also called "veto message." 4. Any authoritative prohibition or rejection of a proposed or intended act. —*tr.v.* *vetoed, -toing, -toes*. 1. To prevent (a legislative bill) from becoming law by exercising the power of veto. 2. To forbid or prevent authoritatively; prohibit. [Latin *vetō*, I forbid, from *vetāre*, to forbid.] —*ve'to'er* *n.*

vex (vēks) *tr.v. vexed, vexing, vexes*. 1. To irritate or annoy, as with petty opportunities; bother; pester: "The beauties she so truly sees, / She thinks I have no eye for these, / And vexes me for reason why" (Robert Frost). 2. To confuse; baffle; puzzle. 3. To debate (a problem) at length; bring up repeatedly for discussion: *Let us not vex the question*. 4. To toss about or stir up; agitate. —*See* Synonyms at *annoy*. [Middle English *vexen*, from Old French *vexer*, from Latin *vexāre*. See *wegh-* in Appendix.*] —*vex'er* *n.* —*vex'ing-ly* *adv.*

vex-a-tion (vēk-sā'shan) *n.* 1. The act of vexing. 2. The state or condition of being vexed; annoyance: "The chauffeur, furious, kicks the car with a groan of vexation" (G.B. Shaw). 3. One that vexes; a source of irritation or annoyance.

vex-a-tious (vēk-sā'shəs) *adj.* 1. Causing or creating vexation; annoying; irksome. 2. Full of vexation; disturbed; annoyed.

3. Law. Instituted without sufficient grounds, to serve solely as an annoyance to a defendant. Said of legal actions. —*vex-a'tious-ly* *adv.* —*vex-a'tious-ness* *n.*

vexed (vēkst) *adj.* 1. Irritated; annoyed; troubled. 2. Much discussed or debated; brought up repeatedly. —*vex'ed-ly* (vēk'sid-lē) *adv.* —*vex'ed-ness* *n.*

vex-il-lar-y (vēk'sə-lēr'ē) *n., pl. -ies*. 1. A member of the oldest class of army veterans who served under a special standard in ancient Rome. 2. A standard-bearer. —*adj.* Also **vex-il-lar** (vēk'sə-lər). Of or pertaining to a banner or standard. [Latin *vexillarius*, from *vexillum*, flag. See *vexillum*.]

vex-il-late (vēk'sə-lāt', vēk-sil'it) *adj.* Having a vexillum or vexilla.

vex-il-lum (vēk-sil'əm) *n., pl. vexilla* (vēk-sil'ə). 1. Botany. A usually enlarged upper petal of certain flowers; a standard. 2. Zoology. The weblike part of a feather; the vane. [Latin, flag, diminutive of *velum*, cloth, veil, sail. See *weg-* in Appendix.*]

V.F. 1. vicar forane. 2. video frequency. 3. visual field.

VFW, V.F.W. Veterans of Foreign Wars.

V.G. vicar general.

vhf, VHF very high frequency.

VI Virgin Islands (with Zip Code).

vi. vide infra.

V.I. 1. Virgin Islands. 2. volume indicator.

via (vī'ə, vē'ə) *prep.* By way of. [Latin *viā*, ablative of *via*, road, way. See *wei-* in Appendix.*]

vi-a-ble (vī'ə-bəl) *adj.* 1. Capable of living, as a newborn infant or fetus reaching a stage of development that will permit it to survive and develop under normal conditions. 2. Capable of living, developing, or germinating under favorable conditions, as seeds, spores, or eggs. 3. Capable of actualization, as a project; practicable: "How viable are the ancient legends as vehicles for modern literary themes?" (Richard Kain). —*See* Synonyms at *possible*. [French, from Old French, from *vie*, life, from Latin *vita*. See *gwei-* in Appendix.*] —*vi-a-bil'i-ty* *n.*

Vi-a Do-lo-ro-sa (vī'ə dōl'ə-rō'sə, vē'ə dōl'ə-rō'sə). 1. Jesus' route from Pilate's judgment hall to Golgotha. 2. A difficult course or experience. [Latin, "sad road."]

vi-a-duct (vī'ə-dūkt') *n.* A series of spans or arches used to carry a road or railroad over a wide valley or over other roads or railroads. [Latin *via*, road, way (see *via*) + (*AQUA*)DUCT.]

vial (vī'əl) *n.* A small container, usually glass, for liquids. Also called "phial." —*tr.v.* *vialled or vialled, -aling or -alling, -als*. To put or keep in or as if in a vial. [Middle English *viole*, variant of *fiol*, *PHIAL*.]

vi-a-me-di-a (vī'ə mēd'ē-ə, vē'ə mēd'ē-ə). *Latin*. A middle way; mean between two extremes.

vi-and (vī'ənd) *n.* 1. An article of food. 2. Plural. Provisions; victuals. [Middle English *vianda*, from Old French *viande*, from Vulgar Latin *vīvlanda* (unattested), variant of Latin *vivenda*, gerundive of *vivere*, to live. See *gwei-* in Appendix.*]

vi-at-ic (vī-āt'ik) *adj.* Also *vi-at-i-cal* (-i-kəl). Of or pertaining to traveling, a road, or a way. [Latin *viaticus*. See *viaticum*.]

vi-at-i-cum (vī-āt'ī-kəm, vē-*n.*, *pl. -ca* (-kə) or *-cums*. 1. Ecclesiastical. The Eucharist, as given to a dying person or one in danger of death: "Pope, Cardinal, or washerwoman, they would all take their viaticum with gratitude from the lowest country priest" (Morris L. West). 2. Supplies for a journey. [Latin *viaticum*, traveling provisions, from *viaticus*, of a road or journey, from *via*, way, road. See *via*.]

vi-a-tor (vī-ā'tər, vē-ā'tōr') *n., pl. viatores* (vī'ə-tōr'ēz, -tōr'ēz, vē'ā-tōr'ās'). A traveler; wayfarer. [Latin *viātor*, from *via*, way. See *via*.]

Vi-borg. The Swedish name for *Vyborg*.

vi-brac-u-lum (vī-brāk'yə-ləm) *n., pl. -la* (-lə). Zoology. One of the long, whiplike filaments on the surface of certain bryozoan colonies. [New Latin, diminutive formation from Latin *vi-brāre*, to shake, brandish, *VIBRATE*.] —*vi-brac'u-lar* (-lər) *adj.* —*vi-brac'u-loid* (-loid') *adj.*

vi-brant (vī'brənt) *adj.* 1. Exhibiting, characterized by, or resulting from vibration; vibrating. 2. Pulsing or throbbing with energy or activity: "his verse... is alive, vibrant" (D.B. Wyndham Lewis). 3. Phonetics. Voiced. —*n.* Phonetics. A voiced sound. —*vi'bran-cy* *n.* —*vi'brant-ly* *adv.*

vi-br-a-phone (vī'brə-fōn') *n.* A musical instrument similar to a marimba but having metal bars and rotating disks in the resonators to produce a vibrato. Also called "vibra-harp." [VIBRATE] + *-PHONE*.] —*vi'bra-phon'ist* (-fō'nist) *n.*

vi-brate (vī'brāt') *v. -brated, -brating, -brates. -intr.* 1. To move back and forth rapidly. 2. To produce a sound; resonate. 3. To be moved emotionally; thrill: *vibrate with excitement*. 4. To fluctuate or waver in making choices; vacillate. —*tr.* 1. To cause to tremble or quiver. 2. To cause to move back and forth rapidly. 3. To produce (sound) by vibration. —*See* Synonyms at *swing*. [Latin *vibrāre*. See *weip-* in Appendix.*]

vi-br-a-tile (vī'brə-tīl, -tīl') *adj.* 1. Characterized by vibration. 2. Capable of or adapted to vibratory motion. [French, from Latin *vibrāre*, *VIBRATE*.] —*vi'bra-tīl'i-ty* (-tīl'ə-tē) *n.*

vi-br-a-tion (vī-brā'shan) *n.* 1. The act of vibrating. 2. The condition of being vibrated. 3. Physics. a. A rapid linear motion of a particle or of an elastic solid about an equilibrium position. b. Any periodic process. 4. A single complete vibrating motion; quiver; tremor. —*vi-br'a-tion-al* *adj.*

vi-br-a-to (vī-brā'tō, vē-) *n., pl. -tos. Music*. A tremulous or pulsating effect produced in an instrumental or vocal tone by barely perceptible minute and rapid variations in pitch. Compare *tremolo*. [Italian, from Latin *vibrātus*, past participle of *vibrāre*, *VIBRATE*.]

COPY OF TRANSCRIPT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SPERO T. HARITATOS,

Plaintiff,

vs.

Case No. 05CIV.930 (DNH/GJD)

HASBRO, INC. AND
TOYS "R" US-NY LLC,

Defendants.

DEPOSITION of **SHARON HARITATOS**, held on May 18,
2006, at the offices of Accurate Court Reporting, Inc.,
1618 Genesee Street, Utica, New York, commencing at 10:00
a.m., before Brenda J. Shimer, Court Reporter and Notary
Public in and for the State of New York.

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S. HARITATOS

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Q. Ten percent?

A. Yeah.

Q. Okay, is there any other way in which your business sells candy?

A. Web site.

Q. And that is www.turkeyjoints.com.?

A. Correct.

Q. How long have you had the web site?

A. 1999, I believe.

Q. You believe since 1999?

A. Yeah.

Q. And is it possible for someone to purchase Turkey Joints if they go to turkeyjoints.com?

A. Yes.

Q. Can they purchase anything else?

A. Clusters and fudge currently. And whatever I want to put in the catalog, if we have any kind of specials.

Q. And what percentage of your gross revenues in 2004 were derived from the web site, turkeyjoints.com?

A. Maybe five, six. I don't -- guesstimate.

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S. HARITATOS

Q. Okay. You would guess about -- your best guess as you sit here today is about five or six percent?

A. Yes.

Q. Okay. And do you keep records of the sales that you make through the web site?

A. Yes.

Q. Okay. How does that work? Let's say I go to the web site and I -- is there someplace I can click on and purchase Turkey Joints?

A. Shopping cart.

Q. Shopping cart, okay. And then how do you find out about my order?

A. You open up -- it's an order screen just for the day's work, whatever orders may have come in and you see customer list. Click on the customer list and you see the order.

Q. You click on a customer list and it tells you --

A. Those are the orders that came in that day and then you just process the

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orders from clicking on each order as you go down through.

Q. What does that mean, to process the order?

A. Read the order, see if we have everything in stock. Package it, packing slip, apply a UPS label.

Q. Do you do that yourself?

A. Yes.

Q. Does anybody else do that?

A. Yes.

Q. Who else is involved in taking the web site orders?

A. Would be my sister, Karen Williams.

Q. Okay, anybody else?

A. We have people that do the packaging but not anyone else that would get on the web site usually but the two of us.

Q. Okay, so other people help with the packaging?

A. The packaging and we type up a UPS label but the web site would just be Karen and myself.

Q. Does Spero do that at all?

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A. Not usually.

Q. Who are the people that help with the packaging?

A. Would be Marlena Eaton and Brianna Williams.

Q. And are you related to them in any way?

A. Brianna is my niece, Karen's daughter.

Q. What about Marlena Eaton?

A. Not related, an employee.

Q. She is not related to Spero Haritatos either?

A. No.

Q. Okay. What percentage of your sales in 2004 through the turkeyjoints.com were for Turkey Joints?

A. Again the bulk of it. I am going to guess again 90.

Q. Again, could you determine the percentage if you looked at your records?

A. Yes.

Q. That would be easy for the web site?

A. Yes.

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S. HARITATOS

Q. Specifics, yes, ma'am?

A. No.

Q. You can't point to any sales that you lost with specificity?

A. Not with specificity, no.

Q. One moment please. Ma'am, when did you first learn that your husband had sued Toys "R" Us?

A. I don't know if it was -- I can't say specifically. It was early this year, late; I'm not really sure.

Q. Unsure?

A. Yeah.

Q. All right. Ma'am, do you have any information as to whether or not your husband or anyone acting on his behalf sent any letter to Toys "R" Us demanding that they cease and desist using the term Candyland before that suit was instituted?

A. I don't know.

Q. Seem like a reasonable thing to do before suing to you?

A. I guess; I don't...

Q. Does the business keep invoices for

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all sales made that are shipped?

A. Yes.

Q. How are those invoices kept, on paper or electronically?

A. Both.

Q. So that if a request were to be made for copies of invoices shipped by UPS, mail, or any other common carrier, would it be possible to produce copies of those invoices by querying the computer system?

A. To some degree.

Q. To some degree.

A. It's a limited data base.

Q. What is the limitation -- limitation or limitations that you are thinking of?

A. I don't know how often it purges. I would say a year, I'm guessing.

Q. You are unsure?

A. Yeah.

Q. How about in hard copy, in paper, how far back do you keep those?

A. Several years.

Q. Are they segregated by -- in any manner?

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NORTHERN DISTRICT OF NEW YORK

SPERO HARITATOS,

Plaintiff,

-vs-

Index No.:
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TOYS "R" US-NY LLC,

Defendant.

Examination Before Trial of
SPERO T. HARITATOS, Plaintiff, held at
the offices of BOND, SCHOENECK & KING,
PLLC, Syracuse, New York, on May 17,
2006, before MELISSA A. LANNING, Court
Reporter and Notary Public in and for
the State of New York.

EXAMINATIONS

Witness: Page

SPERO T. HARITATOS

EXAMINATION BY MR. SANT'AMBROGIO 8, 305

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product that he made?

A. Yeah -- at the 321, yes.

Q. Were there any other products that he made?

A. Again, he made peanut brittle -- peanut brittle, because I remember making a lot of that with him. We made clusters, some chocolate covered pieces.

Q. And have you made them ever since? You or your father, have you made them ever since you started working, those three items: The peanut brittle --

A. Have I made them?

Q. I'm sorry. Let me start that question again because it got very confusing.

The three items that you just mentioned, the peanut brittle, the clusters and the chocolate covered pieces, have you or your father made them since you started working for your father?

A. Have I made them since I started -- I've made them, yes. Is that what you're asking me?

Q. Yeah.

A. Yes.

Q. That's what I've been trying to ask you.

A. Yes, I have made them.

Q. But your primary product today is turkey joints, correct?

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A. Correct.

Q. Do you make --

A. Yes.

Q. Do you make -- are all of your candies seasonal?

A. The candies, yes.

Q. So you're not manufacturing any candy right now?

A. Well, if we get low on, like, nut clusters we'll fill them back, but we don't manufacture any of the sugar pieces because of the humidity and the temperatures. But the nut clusters, we have manufactured them this time of year and through the summer, but primarily it's seasonal.

Q. Are you manufacturing the nut clusters right now?

A. No, not right now.

Q. Okay.

A. I'm doing maintenance.

Q. Okay. Maintenance, what is that?

A. I breakdown some of the equipment, clean it, repair the parts that I don't like, change out bearings.

Q. Okay. So during the summer you are

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primarily involved in the maintenance work?

A. Correct, or ice cream.

Q. Or ice cream?

A. Right.

Q. Is that another product that you sell?

A. Yes.

Q. Okay. How long have you sold ice cream?

A. A couple years -- three years, I believe.

Q. And you sell that at your retail store, Nora's Candy Shop?

A. Correct.

Q. Do you sell it anywhere else?

A. Price Chopper in Rome.

Q. And that's in Rome, New York?

A. Correct.

Q. Anywhere else?

A. No.

Q. Okay. Do you sell any other products during the summer?

A. No.

Q. Okay. I'd like to introduce what's been mark as Defendant's Exhibit 14. This is --

MR. SANT'AMBROGIO: Actually, can we go off the record for a second?

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VIDEOGRAPHER: Go off record

11:18.

(Whereupon, a discussion was held off the record.)

VIDEOGRAPHER: Back on record

11:19.

(Whereupon, Exhibit Number 14 was marked for identification, this date.)

MR. SANT'AMBROGIO: What we've put before you are your Amended and Supplemental Interrogatory Responses in the Trademark Trial and Appeal Board proceeding, and I believe there are a couple of sections of that that your counsel has designated as confidential and would like to designate confidential under the protective order in this case, correct.

MR. PURCELL: Correct. They appear on pages 9 and 10 of the exhibit.

MR. MCGOWAN: The entirety of those pages?

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Q. I don't think so. Would you like them to be?

MR. McGOWAN: That's it.

MR. SANT'AMBROGIO: Okay.

MR. McGOWAN: Thank you, sir. And if I have offended you by saying joints, I apologize.

THE WITNESS: Thank you.

MR. McGOWAN: There was no intent to indicate anything that may have been lax. I apologize.

THE WITNESS: Thank you.

EXAMINATION BY MR. SANT'AMBROGIO:

Q. I have a few more questions. Do you want to take a break, or should we continue?

A. No, that's okay.

Q. Okay. I want to introduce what's been marked as Defendant's Exhibit 2.

(Whereupon, Exhibit Number 2 was marked for identification, this date.)

BY MR. SANT'AMBROGIO:

Q. And this is the transcript from your TTAB

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proceeding -- I'm sorry, excuse me. Strike that.

This is a transcript from your deposition in the TTAB proceeding; is that correct?

A. Yes.

Q. Okay. And is this the transcript that you reviewed in preparation for your deposition today?

A. Yeah, I looked through it.

Q. Okay. And did you ever review this transcript before you reviewed it in preparation for your deposition today?

A. Yeah, after the first deposition.

Q. Okay. Was that shortly after the first deposition?

A. Yeah, I believe so.

Q. Okay. And did you sign this transcript ever?

A. I can't remember.

Q. Okay. And do you recall -- I think you testified earlier that you didn't make any corrections to it; is that correct?

A. I corrected some things in it.

Q. And did you give those corrections to your lawyer?

A. Yes.

A. A. LANNING, CSR

(315) 676-2584

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Q. Okay. Do you recall what those things were?

A. No, I don't.

Q. Okay. Have you ever conducted a survey of your customers?

A. Just by mailing out the declaration sporadically.

Q. Okay. But you have never surveyed who your customers are?

A. No.

Q. You've never attempted to determine the demographics of your customers?

A. Do you mean by "demographic" --

Q. Their income, their interests; any information about your customers?

A. No.

Q. You've never attempted to survey any information about your customers, correct?

A. No.

Q. And you've never attempted to survey where your customers live, correct?

A. No.

Q. Okay. But mostly your customers are in the Rome and Utica area, correct?

A. Some of them.

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Q. Well, most of them are in the Rome and Utica area; are they not?

A. Yes.

Q. Okay. Rome -- how many people live in Rome?

A. I don't know exactly what the population is.

Q. Okay. Can you guess?

A. No.

Q. Okay. Rome is not a major tourist attraction, though, is it?

A. No.

Q. Okay. And Rome is not on an interstate highway, is it?

A. No.

Q. Okay. I want to introduce what's been marked as Exhibit 21, Defendant's Exhibit 21.

MR. McGOWAN: Thank you, sir.

MR. SANT'AMBROGIO: And at the

same time I'll introduce what's been marked as Defendant's Exhibit 22.

MR. McGOWAN: Thank you.

(Whereupon, Exhibit Numbers 21 and 22 were marked for identification, this date.)

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